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11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

13
14 CHAN-HIE KIM, individually and as co-trustee
of the Chan-Hie Kim & Sook-Chung Kim Trust,

15 Plaintiff,

16 vs.

17 WELLS FARGO, N.A.; WELLS FARGO &
18 COMPANY; BANK OF AMERICA, N.A.;
BANK OF AMERICA CORPORATION;
19 VIRGEL MABINI; NANCY BECERRA; DOES
1-100, inclusive

20 Defendants.

CASE NO. 3:21-cv-05405-JD

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR ORDER
REMANDING REMOVED ACTION TO
STATE COURT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: September 30, 2021

Time: 10:00 a.m.

**Dept.: Courtroom 11 – 19th Floor; Hon.
Judge James Donato**

Complaint Filed: May 21, 2021

Action Removed: July 14, 2021

1 **NOTICE OF MOTION AND MOTION**

2 TO THE COURT, DEFENDANTS AND THEIR COUNSEL OF RECORD: PLEASE
3 TAKE NOTICE THAT ON September 30, 2021 at 10:00 a.m., or as soon thereafter as the matter
4 can be heard in Courtroom 11, 19th Floor, of the United States District Court for the Northern
5 District, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, California
6 94102, plaintiff CHAN-HIE KIM, individually and as co-trustee of the Chan-Hie Kim & Sook-
7 Chung Kim Trust (“Plaintiff”) will, and hereby does, move this Court, for an order remanding this
8 action, removed by against defendants BANK OF AMERICA, N.A. (“BANA”) and BANK OF
9 AMERICA CORPORATION (“BAC”) (collectively “Defendants”), to the Superior Court for San
10 Francisco County.

11 Plaintiff’s motion to remand is brought in response to the Notice of Removal (“Removal”)
12 filed by Defendants on July 14, 2021. The motion is brought on the grounds that the Court lacks
13 jurisdiction over this action under 28 U.S.C. § 1331 because, contrary to Defendants’ assertions in
14 their Removal, the Edge Act (12 U.S.C. § 632) does not grant this Court jurisdiction over the instant
15 suit. Plaintiff’s claims are brought solely under California state statutory law (the California Elder
16 Abuse and Dependent Adult Civil Protection Act and California Business & Professions Code §
17 17200 *et seq.* regarding Unlawful, Unfair and Deceptive Business Practices) – no federal claims are
18 made and no references to “international banking” were alleged because this action does not arise
19 out of transactions involving international or foreign banking. Nonetheless, Defendants argue that
20 this Court has jurisdiction over this suit based upon a strained interpretation of the Edge Act, 12
21 U.S.C. § 632, an argument that is without merit for the reasons set forth herein. As such, Plaintiff
22 respectfully submits that the Court remand the suit to the Superior Court of San Francisco County.

23 Pursuant to Local Rule 7-2(b), this Motion is based upon this Notice of Motion and Motion,
24 the attached Memorandum of Points and Authorities, the Declaration of Kirsten Fish and exhibits
25 filed concurrently with these moving papers, the proposed order filed concurrently with these moving
26 papers, any papers filed in reply, all other papers and records on file in this matter, and such other
27 argument and evidence as this Court may consider at or before the hearing, if any, of this motion.

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Dated: August 13, 2021

NEEDHAM KEPNER & FISH LLP

By:



Kirsten Fish
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff CHAN-HIE KIM, individually and as co-trustee of the Chan-Hie Kim & Sook-
4 Chung Kim Trust (“Plaintiff”) properly filed this lawsuit in the Superior Court of California against
5 defendants BANK OF AMERICA, N.A., BANK OF AMERICA CORPORATION, WELLS
6 FARGO, N.A., WELLS FARGO & COMPANY, VIRGEL MABINI, NANCY BECERRA and
7 DOES 1-100, inclusive, given that the only claims alleged in the Complaint were those brought
8 under California state statutory law (the California Elder Abuse and Dependent Adult Civil
9 Protection Act and California Business & Professions Code § 17200 *et seq.* regarding Unlawful,
10 Unfair and Deceptive Business Practices) – no federal claims were made and no references to
11 “international” or “foreign” banking were alleged in the Complaint because this action does not arise
12 out of transactions involving international or foreign banking. Nevertheless, on July 14, 2021,
13 defendants BANK OF AMERICA, N.A. (“BANA”) and BANK OF AMERICA CORPORATION
14 (“BAC”) (collectively “Defendants”) filed a Notice of Removal (“Removal”) to the federal district
15 court on the wholly improper ground of federal question jurisdiction under 28 U.S.C. §§ 1331, 1441
16 and 1446, and 12 U.S.C. § 632.

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

18 This financial elder abuse case arises from a “tech support scam” that drained nearly all of
19 the elderly Plaintiff’s life savings. (Declaration of Kirsten Fish (“Fish Decl.”), **Exhibit A**, Complaint
20 ¶ 1.) The scam first started in September, 2020, when a large warning message popped up on
21 Plaintiff’s computer saying his computer was hacked, not to touch anything, and to call a phone
22 number. (*Id.*, ¶ 19.) When Plaintiff called the number the person who answered said he was with
23 Microsoft. (*Id.*) The scammer said that Plaintiff’s bank account at Bank of America was hacked and
24 connected Plaintiff with another scammer who said he was with “Bank of America Fraud
25 Prevention department.” (*Id.*) The scammer said that Plaintiff’s social security number and birthdate
26 were exposed and his retirement accounts at another institution were at risk. (*Id.*) The scammer told
27 Plaintiff to transfer all of his retirement funds to Bank of America in order to “rebuild” his

1 retirement accounts with new account numbers in order to protect his funds. Following his
2 instructions, Plaintiff transferred his retirement funds to his account at Bank of America, which was
3 titled in his trust entitled the “Chan-Hie Kim & Sook-Chung Kim Trust,” in six huge increments,
4 totaling over \$2,000,000.00 being transferred into his Bank of America trust account. (*Id.*)

5 Immediately following each large deposit from his investment account, Plaintiff entered a Bank of
6 America branch and requested huge wire transfers with no questions asked by Defendants. (*Id.*)

7 Plaintiff, age 85 at the time, had been a customer of Defendants for over 30 years. (*Id.*, ¶ 18.)
8 Prior to September 2020, Plaintiff never engaged in any “suspicious transactions.” In particular,
9 neither co-trustee of the Chan-Hie Kim & Sook-Chung Kim Trust regularly, or at all, engaged in
10 any transactions where they were depositing large amounts to the trust account, and then
11 withdrawing large amounts from the trust account by wire transfer. (*Id.*) According to Defendants’
12 own records, deposits into the trust account with Bank of America prior to the scam consisted
13 almost entirely of small amounts, and checks drawn on the account for expenses during that period
14 were for approximately the same amount of money. (*Id.*) Then, after years of doing these regular,
15 frugal transactions with Defendants, suddenly most of the transactions out of the Chan-Hie Kim &
16 Sook-Chung Kim Trust Bank of America account from September 23, 2020 to November 19, 2020
17 involved wire transfers of enormous amounts of cash totaling over \$1,480,000.00. (*Id.*)

18 Each time the scammers instructed him to wire more cash, the 85-year-old Plaintiff walked
19 into his long-time Bank of America branch and met in person, face-to-face with a teller, who then
20 would call over a bank manager to approve his wire transfers. (*Id.*, ¶ 20.) Even though Defendants
21 knew or should have known that the elderly Plaintiff was potentially being scammed, they did
22 nothing to stop the ongoing scam, and ignored the many government advisories they have received
23 informing them to detect, deter and respond to the “red flags” of financial elder abuse. (*Id.*) Thus,
24 Defendants provided the scammers with substantial assistance by allowing Plaintiff to continue to
25 wire away almost \$1,500,000.00 until his life savings was nearly depleted. (*Id.*) On top of this abject
26 failure to protect their elderly customer, Defendants directly charged Plaintiff fees in the amount of
27 \$30.00 to \$45.00 for each of the wire transfers to the scammers, totaling \$1,575.00 in fees. (*Id.*)

1 Accordingly, Plaintiff's Complaint alleges causes of action against Defendants for financial
2 elder abuse under California's Welfare & Institutions Code § 15600 et seq. and unfair and deceptive
3 business practices under California's Business & Professions Code § 17200 et seq. and was filed on
4 May 21, 2021 in San Francisco Superior Court.

5 **III. LAW AND ARGUMENT**

6 Defendants argue this Removal was proper because "Plaintiff's claims arise from and involve
7 foreign banking transactions, which are subject to federal jurisdiction pursuant to the Edge Act, 12
8 U.S.C. § 632," which creates federal subject-matter jurisdiction over "all suits of a civil nature at
9 common law or in equity to which any corporation organized under the laws of the United States
10 shall be a party" and that arise "out of transactions involving international or foreign banking." (Fish
11 Decl., **Exhibit B**, Removal 5:9-14.) For the reasons set forth herein, this argument fails and this case
12 should be remanded to the Superior Court for the County of San Francisco.

13 **A. Legal Standard for Removal**

14 Removal is only appropriate when the district courts of the United States had original
15 jurisdiction over the action. (28 U.S.C. § 1441; *see also Luther v. Countrywide Home Loans*
16 *Servicing LP*, 533 F.3d 1031, 1032 (9th Cir. 2008).) Original jurisdiction may be based on a federal
17 question or diversity. (*Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).) Federal question
18 jurisdiction exists if the case "aris[es] under the Constitution, laws, or treaties of the United States."
19 (28 U.S.C. § 1331.) For an action to be removed on the basis of federal question jurisdiction, the
20 complaint must establish either that federal law creates the cause of action or that the plaintiff's right
21 to relief necessarily depends on the resolution of substantial questions of federal law. (*Franchise Tax*
22 *Board of Cal. v. Const. Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 10-11 (1983).) If a
23 federal court determines the case was improperly removed and that it does not have original
24 jurisdiction, the court must remand the action to state court. (28 U.S.C. § 1447.)

25 The party seeking removal bears the burden of showing that removal is proper, and that
26 burden is heavy, as the standards for federal jurisdiction are well established. (*Tortola Rest. v.*
27 *Kimberly-Clark Corp.*, 987 F.Supp. 1186, 1188 (N.D. Cal. 1997); *Gaus v. Miles, Inc.*, 980 F.2d 564,

1 566 (9th Cir. 1992); *UPS, Inc. v. Flores-Galarza*, 385 F.3d 9, 15 (1st Cir. 2004); *Kokkohen v.*
2 *Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994) [“[i]t is to be presumed that a cause
3 lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party
4 asserting jurisdiction”].) Thus, removal jurisdiction is extremely circumscribed and the removal
5 statute is strictly construed against removal. (*See Gaus*, 980 F.2d at 566 [“Federal jurisdiction must
6 be rejected if there is any doubt as to the right of removal in the first instance”].)

7 In fact, the Ninth Circuit applies a “‘strong presumption’ against removal jurisdiction.” (*Id.*;
8 *see also Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009).) Indeed, federal courts
9 are obligated to consider whether they have jurisdiction even in the absence of a remand motion.
10 (*Rains v. Criterion Systems, Inc.*, 80 F.3d 339, 342 (9th Cir. 1996).) Any doubts or ambiguity as to
11 federal jurisdiction are resolved in favor of remand to state court, and the defendant always has the
12 burden of establishing that removal was proper. (*See Gaus*, 980 F.2d at 566; *Luther*, 533 F.3d at
13 1032; *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988).)

14 **B. Plaintiff’s Case Should be Remanded Because The Edge Act Is Narrowly**
15 **Construed And Strictly Limited To Cases, Unlike The Present Case, Where An**
16 **Alleged International Banking Transaction Is “Legally Significant” And**
17 **“Integrally Tied” To The Plaintiff’s Claims.**

18 Defendants’ Removal is based entirely on the Edge Act of 1913, 12 U.S.C. § 632. The Edge
19 Act provides for original federal jurisdiction over “all suits of a civil nature at common law or in
20 equity to which any corporation organized under the laws of the United States shall be a party,
21 arising out of transactions involving international or foreign banking ... or out of other international
22 or foreign financial operations, either directly or through the agency, ownership, or control of
23 branches of local institutions ... in foreign countries.” (*Id.*) The Edge Act was enacted in 1919 “for
24 the purpose of supporting U.S. *foreign trade*, in part by authorizing the establishment of
25 *international banking and financial corporations*.” (*Am. Int’l Group, Inc. v. Bank of Am. Corp.*, 712
26 F.3d 775, 778 (2d Cir. 2013), emphasis added.) In order for a defendant to remove a suit under the
27 Edge Act, it must demonstrate that (1) one of the parties to the suit is a corporation organized under

1 the laws of the United States, and (2) the suit arises out of transactions involving international or
2 foreign banking or other international or foreign financial operations. (12 U.S.C. § 632.) At issue
3 here is the second element, as Defendants have failed to meet their burden of showing that this case
4 arises out of international or foreign banking or other international or foreign financial operations.

5 Importantly, courts have held that “removal statutes, and in particular the Edge Act, are
6 construed narrowly,” and “courts must carefully examine the nature of the transaction said to ground
7 § 632 jurisdiction.” (*Allstate Ins. Co. v. CitiMortgage, Inc.*, 2012 WL 967582 at *2-3 (S.D.N.Y.
8 2012), emphasis added [holding the Edge Act does not confer jurisdiction merely because there was
9 a federally chartered bank involved, there were banking-related activities, and there were foreign
10 parties but instead, courts must carefully examine the nature of the transaction said to ground § 632
11 jurisdiction].) Additionally, “out of respect for the limited jurisdiction of the federal courts and the
12 rights of states, we must resolve any doubts against removability.” (*Id.*) Thus, “[n]ot all cases
13 involving a federally chartered bank and a foreign party” warrant Edge Act federal jurisdiction.
14 (*Pinto v. Bank One Corp.*, 2003 WL 21297300 at *8-9 (S.D.N.Y. 2003); *see also Diaz v. Pan Am.*
15 *Fed. Sav. & Loan Ass’n.*, 635 F.2d 30, 32 (1st Cir. 1980) [had Congress so intended “it could have
16 stated its intent more easily” in the statute].) Rather, in order for federal jurisdiction to be premised
17 upon the Edge Act, a plaintiff’s claims must be “integrally tied to banking activity” and “the banking
18 aspect of the jurisdictional transaction must be legally significant in the case” as the claims relate to
19 the foreign transactions. (*Bank of New York v. Bank of America*, 861 F. Supp. 225, 232-33 (S.D.N.Y.
20 1994).) In short, “[t]he focus of the court’s inquiry must be whether ‘the transaction in question be
21 one “arising out of...international or foreign banking.”’ (*Telecredit Service Center v. First Ntl. Bank*
22 *of Florida*, 679 F.Supp. 1101, 1103-04 (S.D.Fla. 1988).)

23 For example, in *Telecredit*, the plaintiff brought suit in state court, alleging fraud and
24 misrepresentation against the defendant stemming from credit card charges, some of which were
25 international in nature. (*Id.* at 1102-03.) The defendant removed the case to federal court on the basis
26 of the Edge Act and the plaintiff moved for remand. In evaluating whether Edge Act jurisdiction
27 existed, the court considered “the true nature of the transaction at issue.” (*Id.* at 1103.) Ultimately,

1 the court viewed the “nature of the transaction at issue, i.e. the allocation of risk with respect to
2 fraudulent [credit card] chargebacks, as a contractual dispute between the parties” and held that the
3 question to be resolved by the court was simply “which party is going to bear the loss occasioned by
4 the apparent fraud.” (*Id.*) Thus, because the liability at issue did not “stem from the supposed foreign
5 aspect of the transaction,” but from the alleged fraud of the domestic corporations, there was no
6 Edge Act jurisdiction and the case was remanded to state court. Broadly speaking, *Telecredit* takes
7 the view that, whatever the subject matter of some underlying transaction may be, it is the disputed
8 transaction immediately before the court that matters for jurisdictional purposes. (*Id.*)

9 In the present case, Plaintiff’s Complaint alleges causes of action for (1) Financial Elder
10 Abuse under California’s Elder and Dependent Adult Civil Protection Act (Cal. Welf. & Inst. Code §
11 15600 *et seq.*) and (2) Unlawful, Unfair and Deceptive Business Practices (Cal. Bus. & Prof. Code §
12 17200 *et seq.*). Defendants’ Removal improperly attempts to make this a case about the propriety of
13 foreign currency transactions, instead of Defendants’ financial elder abuse of Plaintiff under
14 California’s elder abuse and unfair business practices laws. However, contrary to Defendants’
15 claims, it is not foreign transactions with any other countries that are at issue in this case, but rather
16 Defendants’ knowing assistance in the blatant financial elder abuse of Plaintiff by unknown others
17 (who are not parties in this case) and Defendants’ financial abuse of Plaintiff by repeatedly failing to
18 “detect, deter, and respond to the elder financial abuse events” during face-to-face transactions at
19 domestic bank branches. Those are the disputed transactions immediately before this Court that
20 matter for jurisdictional purposes. The propriety of any business dealings with foreign countries are
21 wholly irrelevant, and any of Defendants’ actual practices in foreign exchange transactions are in no
22 way “legally significant” to this case. In other words, any potential connection to international
23 banking is too tenuous to warrant jurisdiction under the Edge Act here, and conspicuously absent
24 from Defendants’ Removal is a citation to any case suggesting that the Edge Act can be applied to a
25 financial elder abuse case premised upon state law such as the present one. **That is because the**
26 **financial elder abuse of Plaintiff by Defendants at their bank in California is the gravamen of**
27 **this suit, and such acts were purely domestic.**

1 Because Defendants' liability here does not result from the foreign nature of the transactions,
2 but from the alleged violations of statutory elder and consumer protection laws by the domestic
3 Defendants, there is no Edge Act jurisdiction and the case should be remanded. To wit, the sole
4 purported basis that Defendants offer to show that the transactions giving rise to the instant suit are
5 sufficiently integrally related to foreign or international banking or financial operations is, basically,
6 that the tech support scammers (who are not named parties here) may or may not have been based in
7 foreign countries and Plaintiff's money was ultimately transferred to foreign countries, even though
8 that is not alleged in the Complaint.¹ However, the language of the Edge Act is clear – to be
9 removable the suit in question must, itself, “aris[e] out of transactions involving international or
10 foreign banking...or out of other international or foreign financial operations.” (12 U.S.C. § 632; *see*
11 *also Racepoint Partners, LLC v. JPMorgan Chase Bank*, 2006 U.S. Dist. LEXIS 78046 at *9
12 (S.D.N.Y. 2006) [“Section 632 requires that the ‘financial operation’ *from which the suit arises* be
13 ‘international or foreign’”], emphasis added.)

14 Thus, the fact that Plaintiff's money in the present case happened to be ultimately wired to
15 bank accounts in a foreign country, as opposed to in Florida or New York or anywhere else in the
16 United States, is wholly irrelevant to Plaintiff's claims against Defendants. **The wire transfers at**
17 **issue in this case could have been sent to Muncie, Indiana or Mumbai, India, and it would not**
18 **have made any difference regarding the allegations in Plaintiff's Complaint against Defendants**
19 **for violations of California's statutory elder and consumer protection laws.** Which is precisely
20 why the Complaint does not even state the countries where Plaintiff's funds were wired to, as doing
21 so would not change *anything* in terms of Plaintiffs' claims against Defendants, and it will likely
22 never be known where Plaintiff's funds ultimately ended up. And notably, **none of Plaintiff's actual**
23 **claims against Defendants involve any type of federal questions or any federal banking law.**

24 (See *Bank of New York*, 861 F.Supp. at 232-33 [no Edge Act jurisdiction if claims are not “integrally
25 tied to banking activity” and do not require the court to “consider and apply principals of banking

26 ¹ Defendants gratuitously refer to the scammers as “foreign” in an attempt to bolster their Edge Act
27 claim. (Fish Decl., **Exhibit B**, Removal 5:1-8, 6:4-7.) However, there is no evidence to support this
claim, as neither Plaintiff nor Defendants know the identity or location of the scammers.

1 law to resolve them”]; *Caggiano v. Pfizer*, 384 F.Supp.2d 689, 690 (S.D.N.Y. 2005) [no federal
2 question jurisdiction because “a jury could find defendants liable on each and every one of the eight
3 claims without being required to determine whether any federal law has been violated”].) Rather,
4 Plaintiff’s claims are only tangentially related to any foreign banking transactions at best, and as
5 such, this case is simply not subject to Edge Act jurisdiction, as it does not principally involve the
6 requisite foreign or international banking or financial operations.

7 Where, as here, a plaintiff’s alleged right to relief arises from the defendant’s wrongful act,
8 independent from any international banking transaction, courts have routinely held that there is no §
9 632 jurisdiction, even where an international banking transaction is relevant or related to the
10 transaction or occurrence at issue. (*See e.g., California v. Wells Fargo & Co.*, 2015 WL 4886391 at
11 *5 (C.D. Cal. Aug. 13, 2015) [remanding a case alleging unfair competition against an Edge Act
12 bank because the allegations do not arise out of the transfer of money abroad; “rather, they arise out
13 of the alleged misrepresentations Wells Fargo employees made to customers”]; *Vara v. Inocenti*, No.
14 18-23058-CIV, 2018 WL 8415251, at *2 (S.D. Fla. Nov. 16, 2018) [the court found “the narrow
15 interpretation” of § 632 “more compelling” where plaintiff’s claims “arise out of a dispute regarding
16 Defendants’ conduct toward [plaintiff], not financial transactions”]; *Sollitt v. KeyCorp*, 463 F.App’x
17 471, 473 (6th Cir. 2012) [refusing to subscribe to the “inherently limitless view” that the Edge Act
18 confers jurisdiction if “any part” of the suit “arises out of transactions involving international or
19 foreign banking”]; *Speedy Stop Food Stores, LLC v. Visa, Inc., C.A.*, 2013 U.S. Dist. LEXIS 200283,
20 *12-13 (S.D. Tex. Dec. 26, 2013) [holding that under the requisite “three-part nexus” between the
21 Edge Act corporation, the banking or financial transaction, and the offshore component, “[t]he
22 involvement of any foreign banks [was] fortuitous and legally insignificant to Speedy Stop’s
23 lawsuit” and remanding the case to state court]; *Landesbank Baden-Württemberg v. Capital One
24 Financial Corp.*, 954 F.Supp.2d 223, 226-27 (S.D.N.Y. 2013) [finding the involvement of a foreign
25 transaction fortuitous with respect to the matters placed in issue by the case, thus being insufficient
26 to satisfy the requirements of Edge Act removal]; *Sealink Funding Ltd. v. Bear Stearns & Co. Inc.*,
27 2012 WL 4794450 at *14-16 (S.D.N.Y. Oct. 9, 2012) [finding a lack of a direct nexus between the

1 federally chartered bank and the foreign transaction, the defendant's conduct at issue had no
2 international dimension, the involvement of foreign entities was fortuitous, and the foreign
3 transaction involvement was too attenuated to support Edge Act jurisdiction].)

4 Moreover, the cases cited by Defendants in support of removal are inapposite and not
5 dispositive here. For example, *In re Citibank August 11, 2020 Wire Transfers*, -- F.Supp.3d --, 2021
6 WL 606167 at *13 (S.D.N.Y. Feb. 16, 2021), the core of the litigation involved the plaintiff bank
7 (Citibank) mistakenly sending a \$41.9 million loan payment to a foreign bank account that was
8 executed on Citibank's behalf by agents who were located in a foreign country resulting in common
9 law claims of unjust enrichment, conversion, money had and received, and payment by mistake
10 against the receivers, which is not at all factually similar to the present case. Likewise, *Luby's*
11 *Fuddrucker's Restaurant, LLC v. Visa Inc.*, 342 F.Supp.3d 306, 317 (E.D.N.Y. 2018) is
12 distinguishable and not dispositive, as that case held that because the interchange fee at the core of
13 the litigation was charged by a foreign issuing bank when the customer used a card issued by a
14 foreign bank, the plaintiff's acceptance of foreign-issued credit cards was sufficiently integral to its
15 claims challenging the issuers' rules requiring acceptance of all credit cards in order to confer
16 federal question jurisdiction pursuant to the Edge Act. (*Id.*) Again, that is not at all the situation here,
17 where the ultimate destination of the wire transfers at issue in this case does not make *any* difference
18 to the allegations in Plaintiff's Complaint against Defendants for violations of California's statutory
19 elder and consumer protection laws, and is therefore wholly irrelevant to Plaintiff's statutory claims
20 against Defendants. Plaintiff has also alleged that the wire transfer fees at issue in this case were
21 charged by Defendants, not by any foreign bank as was the case in *Luby's*. (Fish Decl., **Exhibit A**, ¶
22 20.) Further, the *Luby's* court agreed with the district court that the plaintiff had targeted "an entire
23 category of transactions" that involved foreign issuing banks. (*Id.* at 318.) Here, however, the
24 "category of transactions" at issue is clearly the 29 instances of financial elder abuse by Defendants
25 in improperly facilitating transfers of almost \$1,500,000.00 of Plaintiff's funds out of their
26 California branches in less than two months. Lastly, as the *Luby's* court noted, while some courts in
27 the Southern District of New York interpreted the Edge Act to broadly apply to all cases where any

1 part arises out of transactions involving international or foreign banking, citing, e.g., *Pinto*, 2003 WL
2 21297300 at *3, “[o]ther courts require a more direct relationship between the claims and the foreign
3 transaction at issue,” citing *California*, 2015 WL 4886391 at *6, *Sollitt*, 463 F.App’x at 473, and
4 *Weiss v. Hager*, 2011 WL 6425542 at *8 (S.D.N.Y. 2011) (finding no jurisdiction because the heart
5 of the matter was defendants defrauding plaintiff, causing him to wire funds to bank accounts in
6 their control, and the fact defendants’ accounts were in European banks was “incidental” and not
7 “legally significant,” citing *Bank of New York*, 861 F.Supp at 232).² (*Luby’s*, 342 F.Supp.3d at 314-
8 15.) Given that the facts in the present case are more closely analogous to these cases cited herein
9 that requires a more direct relationship between the claims and the foreign transaction at issue and
10 where no Edge Act jurisdiction has been found, this case should be remanded as well.

11 For example, in *Weiss*, 2011 WL 6425542, *3, the plaintiff opened accounts in a New York
12 branch of defendant Capitol One and was provided with allegedly fraudulent investment advice
13 regarding a foreign trading program. Based on this fraudulent advice, the plaintiff made a series of
14 financial transactions, including wiring “substantial sums of money” to European bank accounts
15 controlled by Capitol One, and wiring \$350,000 to an account in Israel. (*Id.* at *3-4.) Yet the court
16 noted that it “cannot find that it has § 632 jurisdiction merely because there was a federally chartered
17 bank involved, there were banking-related activities, and there were foreign parties.” (*Id.* at *7,
18 quoting *Lazard Freres & Co. v. First Nat’l Bank of Md.*, 1991 WL 221087, *2-3 (S.D.N.Y. Oct. 15,
19 1991).) Rather, the court stated, it “must carefully examine the nature of the transaction said to
20 ground 632 jurisdiction.” (*Id.*) In remanding the case, the court held that the international connection
21 was merely “incidental,” holding “the defendants could have convinced plaintiff to send his money
22 anywhere” and “[t]hat plaintiff sent money to European bank accounts is not integral to his claims.”
23 (*Id.* at *8-9.) That is exactly the situation here, where the scammers could have convinced Plaintiff
24 to send his money anywhere. That Plaintiff sent money to Asian bank accounts is not integral to his
25 claims for the reasons above and as such, there is likewise no § 632 jurisdiction here.

26 ² The *California* court noted that “there is a paucity of case law in the Ninth Circuit regarding Edge
27 Act jurisdiction in general,” although it ultimately held the Edge Act did not confer jurisdiction over
the suit and the case was remanded. (*California*, 2015 WL 4886391 at *18, *26.)

1 In conclusion, Edge Act jurisdiction is narrowly construed and strictly limited to cases where
2 the international banking transaction is “legally significant” and “integral” to the plaintiff’s claims,
3 which Defendants have not shown to be the case here. As such, Defendants have failed to meet their
4 burden to show that the instant suit is removable under 12 U.S.C. § 632, let alone overcome the
5 strong presumption against removal jurisdiction. Because the Edge Act does not apply, federal
6 question jurisdiction under 28 U.S.C. § 1331 is also not present, and Plaintiff therefore respectfully
7 requests that this Court remand this case to the Superior Court of California for San Francisco.

8 **C. Principals of Comity Support The Remand Of This Case Back To State Court.**

9 Finally, setting aside all of the foregoing reasons why Defendants’ Removal fails as a matter
10 of law, the Court should still refuse, on comity grounds, to take from California State courts a case
11 brought by an elderly plaintiff which seeks the return of monies to a California resident on the basis
12 of California State law. Over seventy years ago, the Supreme Court established the federal courts’
13 discretion to refuse jurisdiction over cases where hearing them would run contrary to the
14 independent interests of a state in enforcing its laws and protecting the interests of its citizens:

15 Although a federal equity court does have jurisdiction of a particular proceeding, it
16 may, in its sound discretion, whether its jurisdiction is invoked on the ground of
17 diversity of citizenship or otherwise, “refuse to enforce or protect legal rights, the
18 exercise of which may be prejudicial to the public interest”; for it “is in the public
19 interest that federal courts of equity should exercise their discretionary power with
proper regard for the rightful independence of state governments in carrying out
their domestic policy.” (*Burford v. Sun Oil Co.*, 319 U.S. 315, 317-18 (1943).)

20 The Supreme Court later reaffirmed this principle:

21 [T]he presence of a disputed issue and the ostensible importance of a federal forum are
22 never necessarily dispositive; there must always be an assessment of any disruptive
23 portent in exercising federal jurisdiction. . . . [T]he question is, does a state-law claim
24 necessarily raise a stated federal issue, actually disputed and substantial, which a
25 federal forum may entertain ***without disturbing any congressionally approved balance
of federal and state judicial responsibilities.*** (*Grable & Son Metal Products, Inc. v.
Darue Engineering & Manufacturing*, 545 U.S. 308, 314 (2005), emphasis added.)

26 These concerns are particularly relevant where, as here, Plaintiff is an elderly California
27 resident who filed in state court under California’s elder abuse protection and unfair business

1 practices statutes. "Considerations of comity make us reluctant to snatch cases which a State has
2 brought from the courts of that State, unless some clear rule demands it." (*California v. H&R Block,*
3 *Inc.*, 2006 WL 2669045 at *5-6 (N.D. Cal. Sep. 18, 2006).) Here, Plaintiff has brought suit under
4 California State law, in California State courts, to seek monies which Defendants wrongfully took
5 from his accounts in California.

6 As discussed at length above, Defendants' Removal fails here. Thus, far from being clear
7 that these circumstances demand removal of the case to this Court, there are overwhelming reasons
8 against doing so. Plaintiff accordingly respectfully submits that the Court should reject Defendants'
9 attempt to remove the instant action to this Court and thereby stymie the methods chosen by
10 Plaintiff to vindicate the rights of elderly citizens such as himself, and instead remand the case back
11 to the Superior Court of California for San Francisco State.

12 **IV. CONCLUSION**

13 "If at any time before final judgment it appears that the district court lacks subject matter
14 jurisdiction, the case shall be remanded." (28 U.S.C. § 1447(c).) For the reasons set forth herein,
15 Plaintiff respectfully requests that this Court grant Plaintiff's motion for lack of subject matter
16 jurisdiction and remand this action to the California Superior Court in and for the County of San
17 Francisco.

18 Dated: August 13, 2020

NEEDHAM KEPNER & FISH LLP

19
20 By:



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